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No. 07-1285

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SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

JIMMY ADAMS, *et al.*,

Petitioners,

v.

THE BRINK'S COMPANY, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION

ROBERT M. ROLFE
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
(804) 788-8466

Counsel for Respondents

215872

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

RULE 29.6 STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondent The Brink's Company states that it has no parent company and that no publicly held company owns 10% or more of its stock.

Paramont Coal Corporation is a wholly owned subsidiary of The Brink's Company. No other publicly traded company owns 10% or more of Paramont Coal Corporation's stock.

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INTRODUCTION

In this action, Petitioners[1] seek additional pension benefits beyond those provided by the unambiguous terms of the Brink's Company Pension-Retirement Plan (formerly known as The Pension-Retirement Plan for The Pittston Company and Its Employees, and described throughout this brief in opposition as the "Pittston Plan" or the "Plan") pursuant to the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

One hundred twenty-five former employees of Paramont Coal Corporation ("Paramont") seek benefit accrual service credit under the Pittston Plan for service with Paramont before Paramont's less generous pension plan was merged into the Pittston Plan. They seek this credit even though they retain all benefits they have earned under the Paramont plan for the same years of Paramont service — essentially they want to "double dip" for those years. Pittston denied Plaintiffs the windfall they sought. The district court and the Fourth Circuit agreed that the Pittston Plan is unambiguous and does not allow for such double benefits for the same years of service.

Plaintiffs' Petition For A Writ Of Certiorari ("Petition") does not challenge this holding that the Plan

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[1] This brief refers to (a) Petitioners as "Plaintiffs," "Initial Plaintiffs," or "Remaining Plaintiffs," as appropriate based on whether their claims were tried ("Initial Plaintiffs") or decided on summary judgment ("Remaining Plaintiffs"), and (b) all Defendants/Respondents as "Pittston."

is clear. The Petition does not contend that any Plaintiff has been or will be denied benefits owed by the Pittston Plan. Instead, Plaintiffs claim Pittston told them that they would receive double pension credits and they should therefore receive such benefits despite the clear terms of the Plan. But the district court found after trial on five Plaintiffs' claims that Pittston made no relevant misrepresentations to those Plaintiffs.[2] The district court further found that only five of the 119 Remaining Plaintiffs created a dispute of fact about the existence of any misrepresentation in response to Pittston's summary judgment motion. As to those five Remaining Plaintiffs, the trial court dismissed only four of their claims based on the lack of a disputed fact as to whether the alleged speaker was acting as a fiduciary. And even for those four, the district court decided that their claims were barred by the applicable statute of limitations. *Adams v. Brink's Co.*, 372 F. Supp. 2d 854, 901 (W.D. Va. 2005); *Adams v. Brink's Co.*, 420 F. Supp. 2d 523, 553-556 (W.D. Va. 2006).

The Petition disregards findings and conclusions of the trial court and the holdings of the Fourth Circuit. The judgment below reflects no error with respect to the questions presented by the Petition. More importantly, the questions presented by the Petition are not necessary to the result below and, therefore, should not be heard by this Court.

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[2] The district court found a misrepresentation to Plaintiff Christopher Addington in an early retirement letter, but that misrepresentation is not the subject of the Petition.

STATEMENT OF THE CASE

The Petition's abbreviated recitation of the proceedings below does not allow adequate consideration of the Petition. Pittston therefore supplements Petitioners' Statement of the Case as follows.

In July 1986, Pyxis Resources, a Pittston subsidiary, acquired Paramont Coal Company ("Paramont"). (Pet. App., 7a). At the time, Plaintiffs were employees of Paramont and covered by one of two identical defined benefit pension plans providing a maximum $350 monthly benefit at retirement. Pittston had a pension plan for its employees that potentially paid much higher benefits. After the acquisition, Plaintiffs remained members of the Paramont pension plans until January 1, 1989 when the Paramont Plans were merged into the Pittston Plan. Upon the plans' merger, Plaintiffs' benefits accrued under the Paramont plans were frozen as of December 31, 1988 and retained by Plaintiffs. This case turns on whether Plaintiffs are entitled to receive benefits under the more lucrative Pittston Plan formula based on their years of service (i) beginning when they became members of the Pittston Plan, or (ii) including their pre-plan-merger years of service for which they will also receive benefits under the Paramont plans.

On November 18, 2003, the district court granted summary judgment to Pittston on all claims except for Plaintiffs' claims for breach of fiduciary duty. The district court held that the Pittston Plan did not entitle

Plaintiffs to the higher benefits they sought because the Plan clearly states that benefit accrual service for Paramont employees' service before January 1, 1989 would be determined solely under the terms of the Paramont plans. Plaintiffs later moved for reconsideration of this holding. On January 18, 2005, the district court denied Plaintiffs' motion and again held the Plan was unambiguous. The Fourth Circuit affirmed the district court's ruling that the Plan language is clear and unambiguous and does not provide Plaintiffs the benefits they allege. (Pet. App., 24-25a).

After full trial of five Initial Plaintiffs' claims, the district court found that the only misrepresentation made to any of them was a January 27, 1995 letter to Christopher Addington that overstated the amount he would be paid in early retirement. That sole misrepresentation to Addington is not a subject of the Petition. (Pet. Cert. i n.1). The court granted judgment in Pittston's favor on the claims of the four other Initial Plaintiffs. *Adams*, 372 F. Supp. 2d at 899-901. Among her findings after trial, the district judge found that (a) Spindler made no misrepresentation at the Clinch Valley College meeting that the Petition discusses extensively (*id.* at 899-900; Pet. Cert. at 12-13); (b) Quillen, whose alleged statements the Petition discusses extensively (Pet. Cert. at 13), was not a credible witness and made no misrepresentation, (*Adams*, 372 F. Supp. 2d at 897); and (c) there was no evidence that Pittston acted with any intent to deceive. *Id.* The district court also found as an alternative basis for denying Initial Plaintiffs' claims that none of the alleged speakers were acting in a fiduciary capacity except Joseph Farrell (who, like the others, made no misrepresentation). *Id.* at 904.

On March 17, 2006, the court granted Pittston summary judgment on all 119 Remaining Plaintiffs' fiduciary duty claims because no genuine issue of material fact existed as to whether Pittston breached a fiduciary duty. Of the 119 Remaining Plaintiffs, the district court found that only five (Adkins, Hess, Shelton, Sluss, and White) provided any evidence of misrepresentation sufficient to create a dispute of fact. *Adams*, 420 F. Supp. 2d at 549. Of those five, only one (Sluss) presented evidence of a misrepresentation by an individual (Joseph Farrell) who could be found to have acted in a fiduciary capacity because he "possessed any discretionary authority to alter the terms of the Pittston Plan or to determine eligibility for benefits or the amount of benefits a participant was entitled to under the Pittston Plan." *Adams*, 420 F. Supp. 2d 552. The district court found that Sluss's claim was time barred. *Id.* at 554.

Thus, the district court based its summary judgment dismissal of only four Plaintiffs' claims (Adkins, Hess, Shelton and White) on a ruling that the alleged speakers were not fiduciaries. Adkins claimed to have heard misrepresentations from Spindler; White from Quillen and Rasnick; Hess from Ratliff; and Shelton from Ratliff and Miller. *Id.* at 550. Importantly, however, for even these four Plaintiffs, the district court provided an alternative basis for dismissal of their claims. The district court found that none of the Remaining Plaintiffs produced any evidence that any alleged misrepresentation occurred on or after December 19, 1995. *Id.* at 553. As a result, all of these claims were barred at a minimum by ERISA's six-year limitations period. *Id.* at 554-55.

REASONS FOR DENYING THE PETITION

This Court will grant certiorari only for compelling reasons. Sup. Ct. R. 10. There is no compelling reason for this Court to grant certiorari in this matter because the issue of when an employee acts as an ERISA fiduciary is simply not a necessary basis for the decision below. Additionally, the decision by the Fourth Circuit does not conflict with any decision made by this Court or the decisions of other United States Courts of Appeal.

I. THE ISSUE OF WHETHER THE SPEAKERS CITED BY PLAINTIFFS WERE ACTING AS FIDUCIARIES IS UNNECESSARY TO ALL BUT FIVE PLAINTIFFS WHOSE CLAIMS ARE TIME-BARRED.

Petitioners ask this Court to clarify what actions make an employee of an entity a fiduciary and whether the doctrines of respondeat superior and/or apparent authority apply in making this determination. As discussed above in the Statement of the Case, these issues were not necessary to the dismissal of any Plaintiff's claim.

Simply put, after trial and on summary judgment, the district court dismissed all but five Plaintiffs' claims (excluding the small portion of Addington's claim) because no one made any misrepresentation to those Plaintiffs. Each of the five remaining Plaintiffs' claims was time barred. Thus, while the district court did in fact decide the issue of when an employee acts in a fiduciary capacity under ERISA, the district court

decided other issues in a way to render the fiduciary duty question raised by Petitioners unnecessary to the final result.

The Fourth Circuit did not address the limitations period, finding it moot in view of that court's other bases for decision. *Adams v. Brink's Co.*, Nos. 06-1744, 06-1770, 2008 WL 142771, at *7 (4th Cir. Jan. 11, 2008) (Pet. App. 23a). Although Petitioners offer to address the limitations issue upon remand (Pet. Cert. 4-5 n.4), they do not argue that the district court wrongly decided the issue. Nor can they. ERISA bars all claims for breach of fiduciary duty six years after the claim first accrues. 29 U.S.C. § 1113 (2000); *Adams*, Nos. 06-1774, 06-1770, 2008 WL 142771, at *11 n.4 (Pet. App. 23a n.4). ERISA also bars fiduciary duty claims three years after participants have actual knowledge of their claims. 29 U.S.C. § 1113 (2000). The district court found that ERISA's three-year and six-year statutes of limitations bar all claims that are the subject of Plaintiffs' petition because (1) Plaintiffs' claims accrued before December 19, 1995, six years before filing this action (*Adams*, 420 F. Supp. 2d at 553-56); (2) Plaintiffs had actual knowledge of their claims more than three years before filing this action, having received the accurate written communications sent to all Paramont employees (*id.*); and (3) Plaintiffs submitted no evidence of fraud or acts of concealment that would trigger the six-year-from-discovery limitations period. *Id.* at 554-55.

In sum, this Court need not, and therefore should not, decide the questions presented by Petitioners.

II. EVEN IF THE QUESTIONS PRESENTED WERE NECESSARY TO THE JUDGMENT IN THIS CASE, *VARITY* DOES NOT REQUIRE A DIFFERENT RESULT BECAUSE NONE OF THE SPEAKERS ATTEMPTED TO OR DID INDUCE CHOICES THAT DEPRIVED PLAINTIFFS OF PLAN BENEFITS.

Petitioners challenge the judgment below as "inimical to" *Varity Corp. v. Howe*, 516 U.S. 489 (1996). (Pet. Cert. 20). This argument relies on an unprincipled and overly expansive reading of *Varity*. Unlike in *Varity*, no Plaintiff here was deprived of Plan benefits and no speaker attempted to affect any Plaintiff's choice under the Plan choices. It is undisputed here that no Plaintiff faced any choice and no Plaintiff will receive less benefits than the clear language of the Plan provides.

Varity held that "a 'person is a fiduciary with respect to a plan,' and therefore subject to ERISA fiduciary duties, 'to the extent' that he or she 'exercises any discretionary authority or discretionary control respecting management' of the plan, or 'has any discretionary authority or discretionary responsibility in the administration' of the plan." *Varity Corp.*, 516 U.S. at 498 (quoting ERISA § 3(21)(A)). In *Varity*, this Court held that an employer/plan administrator acted in its fiduciary capacity when it met with employees specifically to explain plan benefits and encourage the employees voluntarily to forfeit their benefits in favor of an allegedly comparable plan. The message conveyed to employees at this meeting both orally and through four separate written communications distributed at the

meeting was that transferring to the new company would not significantly undermine the security of the employee's benefits. This Court held that "given this view of the facts," the district court decided "that Varity spoke, in significant part, in its capacity as plan administrator, rather than employer." *Varity Corp.*, 516 U.S. at 501-02.

In the present case, the district court found that the Pittston Plan administrators clearly and accurately communicated the Plan benefits to the Paramont employees in writing. *Adams*, 420 F. Supp. 2d at 555. Equally important, Plaintiffs will receive all of their Plan benefits. Plaintiffs do not even contend that any of the alleged statements of the speakers deprived Plaintiffs of any benefits to which the district court held they were entitled under the terms of the Plan. Against this factual backdrop, no case cited by Plaintiffs would support a finding that the speakers acted as fiduciaries and breached their fiduciary duties.

Even if the speakers had incorrectly explained the employees' benefits, Plaintiffs were never given any choice about their pension benefits and thus the communications did not constitute fiduciary acts under *Varity*. After the Paramont plan was merged into the Pittston Plan, Paramont employees did not have to do anything differently to begin accruing the more generous Pittston Plan benefits. Of the five Plaintiffs who created a factual dispute that they heard a misrepresentation that they would receive benefit accrual service credit for their pre-plan-merger years of service with Paramont, none presented any evidence that he or she made any choice or took any action in

reliance on the alleged misrepresentation. The Petition does not claim otherwise.

The Fourth Circuit correctly affirmed the district court's decision and highlighted this case's factual distinction from *Varity*. The court found it "significant that the Pittston Plan administrators clearly and accurately communicated the plan benefits to the Paramont employees in writing." *Adams*, 2008 WL 1422771, at *7 (Pet. App., 19a). The court also noted that none of the alleged misrepresentations deprived Plaintiffs of any benefits to which they are entitled under the Plan, and that all Plaintiffs will receive their contractually defined benefits under the Plan. *Id.*

The judgment below simply does not conflict with *Varity*.

III. THIS CASE DOES NOT PRESENT AN ISSUE ON WHICH A CONFLICT EXISTS AMONG THE CIRCUITS.

For the reasons discussed above, this case does not present an issue on which the circuit courts conflict. While there may be unresolved issues and even differences among the circuits regarding when an employee acts as a fiduciary under ERISA's functional test, those differences are not implicated in this case because the alleged communicators were simply not communicating inaccurately in a situation affecting employees' choices with respect to their benefits. None of the cases cited by Petitioners holds to the contrary.

For example, in *Bowerman v. Wal-Mart Stores, Inc.*, 226 F.3d 574 (7th Cir. 2000), the summary plan description and the oral communications made to a returning pregnant employee failed to inform her that she needed to pay for one month of COBRA to obtain insurance coverage for her pregnancy. The Seventh Circuit did not hold that the ministerial employees acted as fiduciaries when they spoke about plan benefits. Specifically, the court stated, "if the written materials [are] inadequate, then the fiduciaries themselves must be held responsible for the failure to provide complete and correct material information in the event that a nonfiduciary agent provides misleading information." *Id.* at 591. Thus, the court acknowledged that the ministerial employees were not fiduciaries, but that the overall act of informing the plan participants about the procedures to obtain their plan benefits was a fiduciary act. *Id.* at 590-91. The Fourth Circuit agreed that ministerial acts are not fiduciary acts. *Adams*, 2008 WL 142771, at *6 (Pet. App., 19a). Equally important, Pittston's written communications to plan participants accurately described how they would accrue benefit service credit. *Id.* at *8 (Pet. App., 23-25a).

In *Krohn v. Huron Mem. Hosp.*, 173 F.3d 542 (6th Cir. 1999), the Sixth Circuit did not even analyze whether the acting person was acting in a fiduciary capacity. Instead, the court assumed fiduciary status and analyzed whether a fiduciary duty was breached when the plan denied long-term disability benefits to a participant who would have otherwise received the benefit had the employer followed proper procedures and given the plan participant proper information. *Id.* at 549-50. The Sixth Circuit said nothing contrary in

McGrath v. Lockheed Martin Corp., Nos. 00-6601, 00-6602, 2002 WL 31269646 (6th Cir. Oct. 9, 2002). The speaker in *McGrath* acted according to the employer/plan administrator's policy of informing employees that they had to be on active payroll status to receive the benefit of any future decision regarding benefit service when the employees did not, in fact, have to be on active payroll status. *Id.* at **11-12. The speaker sent a letter to the plaintiff misstating the company's policy in lieu of sending the plan document. *Id.* Unlike Pittston, in *McGrath*, the defendants had not distributed numerous correct explanations. Moreover, Petitioners concede that the Sixth Circuit's opinion in *James v. Pirelli Armstrong Tire Corp.*, 305 F.3d 439 (6th Cir. 2002), involved a material misrepresentation misleading an employee in making an informed benefit choice. (Pet. Cert. 16).

The same was true in *Ballone v. Eastman Kodak Co.*, 109 F.3d 117 (2d Cir. 1997), in which, again, the Second Circuit did not analyze whether the acts at issue were fiduciary acts. Starting from the premise that the plan administrator spoke as a fiduciary, the Second Circuit held that a fiduciary duty was breached if the plan administrator made misrepresentations that induced the plaintiffs to retire early and thereby lose the increased benefits they would have received under plan amendments then under consideration. *Id.* at 123-24.

Similarly, in *Taylor v. Peoples Natural Gas Co.*, 49 F.3d 982 (3d Cir. 1995), there was no dispute about whether a fiduciary act had occurred; the dispute involved the scope of the resulting fiduciary duty. The

Third Circuit held that if an employee retired early in reliance upon a plan administrator's misrepresentations, thereby losing benefits to which he would have been entitled under plan amendments about to be implemented, then the plan fiduciary could be held liable. *Id.* at 989. The Ninth Circuit in *Mathews v. Chevron Corp.*, 362 F.3d 1172 (9th Cir. 2004), also addressed a situation in which an employer failed to give an inquiring employee considering an early retirement package accurate information about a possible imminent change in the benefit plan.

Each of these cases presented demonstrably different situations than addressed by the Fourth Circuit below. This case does not, therefore, present an issue on which the circuit courts conflict.

CONCLUSION

This judgment below was correct. Upholding it does not require addressing the questions presented by Petitioners or resolving any conflict among the circuit courts with respect to ERISA. The petition for writ of certiorari should, therefore, be denied.

Respectfully submitted,

ROBERT M. ROLFE
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
(804) 788-8466

Counsel for Respondents